

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
CIVIL ACTION NO. 5:08-CV-00464-H**

NATIONAL GENETICS INSTITUTE,	)	
and BAXTER INTERNATIONAL,	)	
INC.,	)	
	)	
Plaintiffs,	)	
vs.	)	
	)	
TALECRIS BIOTHERAPEUTICS,	)	
INC.	)	
	)	
Defendant.	)	

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**PLAINTIFFS' STATUS REPORT**

Pursuant to the Court's Order of January 30, 2009, Plaintiffs hereby provide the Court with this Status Report concerning the pending reexamination of U.S. Patent No. 6,566,052 (the '052 patent), 6,063,563 (the '563 patent), and 5,780,222 (the '222 patent), the patents-in-suit in the above captioned litigation.

**I. Background**

On September 15, 2008, National Genetics Institute ("NGI") and Baxter sued Talecris for infringing the patents-in-suit.

On November 23, 2008, Talecris filed an Answer and Counterclaims asserting that the patents-in-suit are invalid. Talecris also asserted that Plaintiffs brought an objectively baseless lawsuit in an attempt to monopolize the market in violation of Section 2 of the Sherman Act. (Dkt. No. 16.) The basis for Talecris's antitrust counterclaim is that Plaintiffs were aware of certain prior art, namely an article by R.M. Phatarfod *et al.* entitled "The Use

of a Square Array Scheme in Blood Testing” from the journal Statistics in Medicine (“Phatarfod article”). (*Id.* at ¶¶ 21-27, 52-58.) Talecris’s counterclaim further alleges that Plaintiffs filed suit in bad faith “in an attempt to cause harm even though Plaintiffs know that their infringement lawsuit had no reasonable probability of success.” (*Id.* at ¶ 55.)

On November 7, 2008, Talecris filed in the Patent Office requests for reexaminations of the patents-in-suit. (*See* Dkt. No. 18 Ex. A-C.) Talecris’s requests argued that the patents-in-suit are invalid in view of the Phatarfod article and other references. (*Id.*)

Talecris then filed a motion to stay the litigation. (Dkt. No. 17.) Talecris argued that the reexaminations would result in a finding of invalidity of all claims of the patents-in-suit resulting in “the effective end of this litigation.” (Dkt. No. 18 at 4, 8.)

In the interest of economy to the Court as well as to the parties, Plaintiffs consented to Talecris’s motion and the parties filed a joint stipulation to stay the litigation, which the Court entered on January 31, 2009. (Dkt. No. 28.)

## **II. Events Since the Last Status Report**

In July 2009, the United States Patent Office – after carefully considering the Phatarfod article and other references that Talecris asserted invalidated the patents-at-issue – confirmed the validity of all claims of all three asserted patents in unamended form. (Ex. A-C.) The Patent Office issued Notices of Intent to Issue *Ex Parte* Reexamination Certificates. *Id.* Thus, the Patent Office—for a second time—determined that each and every claim of the three patents-in-suit is valid.

As soon as one of the certificates of reexamination for one of the patents-in-suit publishes, Plaintiffs currently plan to file a motion requesting that the Court lift the stay and

issue an Order for Discovery Plan setting the date by when the parties must proceed with a Rule 26(f) conference.

Respectfully submitted this 1st day of October, 2009.

/s/ E. Danielle T. Williams

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### **CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of October, 2009, I electronically filed the foregoing **PLAINTIFFS' STATUS REPORT** with the Clerk of the Court using the CM/ECF system and that counsel of record who are deemed to have consented to electronic service were served with a copy of this document.

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